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6 **UNITED STATES BANKRUPTCY COURT**

7 **DISTRICT OF NEVADA**

8 In re: Case No. BK-S-18-12662-ABL
 9 MEDIZONE INTERNATIONAL, INC., Chapter 7

10 Debtor.

11 **TRUSTEE'S REPLY TO**
OBJECTION TO
MOTION FOR APPROVAL OF
AMENDED SETTLEMENT AGREEMENT
(FRBP 9019)

14 Hearing Date: April 18, 2019
 Hearing Time: 11:00 a.m.

16 LENARD E. SCHWAERTZER, Chapter 7 Trustee (the “Trustee”) for the above-captioned
 17 bankruptcy case, by and through his counsel, Schwartzer & McPherson Law Firm, replies to the
 18 portions of the *Objection to Application to Employ Meyers Law Group, P.C., as Special Litigation*
Counsel Pursuant to 11 U.S.C. §327(e) and (B) Motion for Approval of Amended Settlement
Agreement (the “Objection”) [ECF No. 160] filed by David Dodd, David Esposito and Philip
 21 Theodore (the “Objectors”) that relate to the Trustee’s pending motion for approval of the
 22 Amended Settlement Agreement [ECF No. 151] as follows:

23 **A. Allegation of Conflict for Employment of Meyers**

24 The Objectors are contesting the Trustee’s *Motion for Approval of Amended Settlement*
Agreement (the “Settlement Motion”) [ECF No. 151] in part because they assert the Meyers Law
 26 Group, P.C. (“Meyers”) is “conflicted from representing the Chapter 7 Trustee because he also
 27 represents the Marshalls” and therefore the Amended Settlement Aagreement cannot be approved.

1 This issue is addressed specifically in the *Trustee's Reply to Objection to Application to*
 2 *Employ Meyers Law Group, P.C., as Special Litigation Counsel Pursuant to 11 U.S.C. §327(e)*
 3 *and (B) Motion for Approval of Amended Settlement Agreement* (the “Employment Reply”) filed
 4 concurrently with this reply brief. No claims against the Marshalls were indicated in the Debtor’s
 5 petition and schedules (prepared by the Objectors). Any litigation commenced by Meyers on
 6 behalf of the Trustee requires the Trustee’s authorization, and the Trustee and Meyers agree that
 7 Meyers will not represent the Trustee in any claims against the Marshalls.

8 As set forth in the Employment Reply, the Objectors do not have standing to bring such
 9 claims against the Marshalls on behalf of the bankruptcy estate, and misconduct of the Marshalls
 10 would not provide the Objectors with a defense or setoff against the Trustee’s claims of
 11 misconduct against the Objectors. In the event the Trustee determines there are viable (and cost-
 12 effective) claims to be pursued by the Trustee against the Marshalls, then separate counsel or
 13 Trustee’s general counsel will be engaged to pursue such claims. In the event an actual conflict
 14 arises, then the situation will be reevaluated. Additionally, the Court may deny payment of
 15 compensation to Meyers pursuant to 11 U.S.C. 328(c) if appropriate.

16 **B. Split of Net Proceeds is a Business Decision of the Trustee**

17 The Objectors are also contesting the Settlement Motion because they do not feel the
 18 25/75% split of any net proceeds is justified in light of their feelings about the Marshalls. The
 19 Objectors have provided an affidavit reciting their version of the history between the parties, but
 20 they have not cited any case law, rule or statute supporting their objection to the Trustee’s
 21 negotiated settlement agreement with the Marshalls.

22 The Trustee’s business decision to split any net proceeds with the Marshalls 25/75% is
 23 partially due to the fact that ownership of the Subject Claims is in dispute as detailed in the
 24 Settlement Motion. The Trustee believes the Subject Claims were not sold or transferred during
 25 the asset sale, but the Marshalls assert that they were, and this will require substantial litigation
 26 and delay to resolve if not settled.

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The Trustee's business decision to split the net proceeds 25/75% with the Marshalls is also based on the fact that the Marshalls and Meyers Law Group are bearing all of the up-front cost and risk of investigating the Subject Claims. The 25% the estate will recover is more than the zero the estate would receive if the Marshalls did not financially support the litigation.

Speculative claims against creditors and indistinct complaints about the division of
proceeds do not constitute a basis to deny approval of the proposed Amended Settlement
Agreement. The Trustee has demonstrated that the Amended Settlement Agreement is in the best
interest of the estate and creditors and should be approved.

Dated: April 12, 2019

/s/ Jason A. Imes
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